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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA

AARON ASELTINE and JOHN DUNDON, on
behalf of themselves and all others similarly
situated,

Plaintiffs,

v.

CHIPOTLE MEXICAN GRILL, INC., and
DOES 1- 50, inclusive,

Defendant,

Case No. RG21088118

Assigned for All Purposes to:
Hon. Evelio Grillo
Dept. 21

AMENDED CLASS ACTION COMPLAINT

[DEMAND FOR JURY TRIAL]

Trial Date: None

1 Plaintiffs AARON ASELTINE and JOHN DUNDON, on behalf of themselves and all others
2 similarly situated, complain and allege upon information and belief based, among other things, upon the
3 investigation made by Plaintiffs and through their attorneys as follows:

4 **NATURE OF ACTION**

5 1. This is a proposed class action seeking monetary damages, restitution, and injunctive and
6 declaratory relief from Defendant Chipotle Mexican Grill, Inc. (“Defendant” or “Chipotle”), arising from
7 its deceptive and untruthful promises to provide “free delivery” or “\$1 delivery” on food deliveries
8 ordered through its App and website.

9 2. Since the beginning of the COVID-19 pandemic, Chipotle has moved aggressively into
10 the food delivery business, exploiting an opportunity presented by Americans’ reduced willingness to
11 leave their homes. To appeal to consumers in a crowded food delivery marketplace, Chipotle has
12 prominently marketed “free” or “\$1” delivery in its mobile application and on its website.

13 3. These representations, however, are false. Chipotle imposes hidden delivery charges on
14 its customers in two ways.

15 4. First, on delivery orders only, Chipotle assesses an additional charge on food orders that it
16 calls a “service charge.” This additional charge amounts to 10% more for the same food received by
17 non-delivery customers. Because this fee is exclusively charged to delivery customers, and not to
18 customers who order in-store or who order online and pick up their food in store, the “service fee” is by
19 definition a delivery fee. Chipotle obscures the true nature of the fee by naming it a “service fee.”

20 5. Second, an even more insidiously, Chipotle secretly marks up food prices for delivery
21 orders only by 12%-15%. In other words, the identical burrito costs approximately \$1 more when
22 ordered for delivery than when ordered via the same mobile app for pickup, or when ordered in-store.

23 6. Both of these hidden delivery upcharges make Chipotle’s “free” or “\$1” delivery promises
24 patently false. The true delivery costs are obscured, as described above, and far exceed the prominent
25 “free” or “\$1” promises.

26 7. By falsely marketing “free” or “\$1” delivery, Chipotle deceives consumers into making
27 online food purchases they otherwise would not make.

28 ///

1 8. Chipotle misrepresents the nature of the delivery charges assessed on the Chipotle mobile
2 application and the website, by issuing in-app and online marketing materials that fail to correct
3 reasonable understandings of the “free” or “\$1” delivery promises, and that misrepresent the actual costs
4 of the delivery service.

5 9. Specifically, Chipotle omits and conceals material facts about the Chipotle delivery
6 service, never once informing consumers in any disclosure, at any time, that: (a) use of the delivery
7 service causes an increase in food prices; and (b) the so-called “service fee” is assessed exclusively on
8 delivery customers and is therefore by definition a delivery charge.

9 10. Hundreds of thousands of Chipotle customers like Plaintiffs have been assessed hidden
10 delivery charges they did not bargain for, pursuant to Chipotle’s uniform nationwide representations on
11 its App and website.

12 11. Consumers like Plaintiffs reasonably understand the “free” or “\$1” delivery
13 representations mean the total additional cost they will pay as a result of having their food delivered, as
14 opposed to ordering online and picking up food in person or ordering and picking up food in person.

15 12. By unfairly obscuring its true delivery costs, Chipotle deceives consumers and gains an
16 unfair upper hand on competitors that fairly disclose their true delivery charges. For example, Chipotle
17 competitors Del Taco and El Pollo Loco both offer delivery services through their app and website. But
18 unlike Chipotle, Del Taco and El Pollo Loco fairly and prominently represent their true delivery charges.

19 13. Plaintiffs seek damage and, among other remedies, injunctive relief that fairly allows
20 consumers to decide whether they will pay Chipotle’s delivery mark-ups.

21 **PARTIES**

22 14. Plaintiff Aaron Aseltine is a citizen of the State of California who resides in Oakland,
23 California.

24 15. Plaintiff John Dundon is a citizen of the State of New York who resides in Binghamton,
25 New York.

26 16. Defendant, Chipotle Mexican Grill, Inc., is incorporated in Delaware and maintains its
27 principal business offices in Newport Beach, California.

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1 **JURISDICTION AND VENUE**

2 17. This Court has jurisdiction over Defendant and the claims set forth below pursuant to
3 Code of Civil Procedure § 410.10 and the California Constitution, Article VI § 10, because this case is a
4 cause not given by statute to the other trial courts.

5 18. Plaintiffs are informed and believe that the State of California has personal jurisdiction
6 over the Defendant named in the action because Defendant is a corporation authorized to conduct and
7 does conduct business in this State. Defendant maintains its corporate headquarters in California, is
8 registered with the California Secretary of State to do sufficient business with sufficient minimum
9 contacts in California, and/or otherwise intentionally avails itself of the California market through the
10 ownership and operation of approximately 428 store locations throughout California, including in the
11 County of Alameda, which has caused both obligations and liability of Defendant to arise in the County
12 of Alameda.

13 19. The amount in controversy exceeds the jurisdictional minimum of this Court.

14 **COMMON FACTUAL ALLEGATIONS**

15 **A. Food Delivery Services Increase in Popularity, and then Explode in Popularity**
16 **During the Pandemic**

17 20. In 2018, the online food delivery industry was an astounding \$82 billion in gross revenue
18 and projected to exceed \$200 billion by 2025.¹

19 21. US Foods reports that the average American consumer has two food delivery apps
20 installed on their mobile phone and uses those apps three times per month.²

21 22. The online food delivery industry predominately influences the country's most financially
22 vulnerable populations. A nationwide research study conducted by Zion & Zion reveals that the largest
23

24
25 ¹ See Frost & Sullivan, *\$9.6 Billion in Investments Spurring Aggressive Expansion of Food*
26 *Delivery Companies*, October 25, 2019, accessible at [https://ww2.frost.com/news/press-releases/9-6-](https://ww2.frost.com/news/press-releases/9-6-billion-in-investments-spurring-aggressive-expansion-of-food-delivery-companies/)
27 billion-in-investments-spurring-aggressive-expansion-of-food-delivery-companies/, last accessed January
19, 2021.

28 ² See US Foods, *New Study Shows What Consumers Crave in a Food Delivery Service*, 2019,
accessible at <https://www.usfoods.com/our-services/business-trends/2019-food-delivery-statistics.html>,
last accessed January 19, 2021.

1 user markets for online delivery food services are the young and the poor.³ During a 90-day timeframe,
2 63% of consumers between the ages of 18 and 29 used a multi-restaurant delivery website or app service,
3 followed by 51% of consumers between the ages of 30 to 44.⁴ The study also demonstrated that the "less
4 income a consumer earns, the more likely the consumer is to take advantage of restaurant delivery
5 services," as those earning less than \$10,000 per year ordered online delivery the most (51.6%).⁵

6 23. Put plainly, the allure for online food delivery services has historically been based upon
7 pure convenience. A 2019 Gallup study of third-party delivery services companies like GrubHub,
8 DoorDash, and Uber Eats reported 72% of customers order online food delivery because they don't want
9 to leave their house; 50% so that they can continue with their ongoing activities; and 41% to avoid bad
10 weather.⁶

11 24. According to data compiled by Yelp, food delivery orders have *doubled* since the
12 COVID-19 outbreak began.⁷

13 25. The arrival of the unprecedented COVID-19 pandemic escalated the value of online food
14 delivery services from one of pure convenience to that of a comforting necessity for many consumers
15 who are sick, in a high-risk population group for COVID-19, or simply do not feel safe to leave their
16 homes and venture out into the public to purchase food during quarantine.

17 26. In its 2019 Economic Report conducted by research firm Technomic, DoorDash reported
18 that 86% of customers agreed that DoorDash played an important role in helping them access food
19 during the pandemic and 77% of consumers increased their use of third-party delivery services during
20

21
22 ³ See Aric Zion and Thomas Hollman, Zion & Zion Research Study, *Usage and Demographics of*
23 *Food Delivery Apps*, accessible at [https://www.zionandzion.com/research/food-delivery-apps-usage-and-](https://www.zionandzion.com/research/food-delivery-apps-usage-and-demographics-winners-losers-and-laggards/)
24 [demographics-winners-losers-and-laggards/](https://www.zionandzion.com/research/food-delivery-apps-usage-and-demographics-winners-losers-and-laggards/), last accessed January 19, 2021.

25 ⁴ *Id.*

26 ⁵ *Id.*

27 ⁶ See Sean Kashanchi, Gallup, *Third-Party Delivery Will Grow; Is Your Restaurant Ready?* May
28 6, 2019, accessible at [https://www.gallup.com/workplace/248069/third-party-delivery-grow-restaurant-](https://www.gallup.com/workplace/248069/third-party-delivery-grow-restaurant-ready.aspx)
[ready.aspx](https://www.gallup.com/workplace/248069/third-party-delivery-grow-restaurant-ready.aspx), last accessed January 19, 2021.

⁷ See Tal Axelrod, The Hill, *Yelp: Delivery and take-out twice as popular as usual amid*
coronavirus, March 20, 2020, available at [https://thehill.com/policy/technology/488749-yelp-delivery-](https://thehill.com/policy/technology/488749-yelp-delivery-and-take-out-twice-as-popular-as-usual-amid-coronavirus)
[and-take-out-twice-as-popular-as-usual-amid-coronavirus](https://thehill.com/policy/technology/488749-yelp-delivery-and-take-out-twice-as-popular-as-usual-amid-coronavirus), last accessed January 19, 2021.

1 this time⁸. Indeed, amidst the uncertainty of the novel virus, 68% of consumers now view ordering food
2 online for delivery as the safer option.⁹

3 27. The era of COVID-19 undoubtedly caused a significant revenue boom for third party
4 delivery services. SEC filings indicate that the top four U.S. food-delivery apps (DoorDash, Uber Eats,
5 GrubHub, and Postmates) collectively experienced a *\$3 billion increase* in revenue in just two quarters,
6 April through September, following the enactment of shelter-in-place restrictions throughout the
7 nation.¹⁰

8 28. The ramp up in utilization of food delivery services also had a massive positive impact on
9 restaurant owners who were quickly on the brink of facing permanent closures during lockdown: 67% of
10 restaurant operators said DoorDash was crucial to their business during COVID-19 and 65% say they
11 were actually able to *increase* profits during this time because of DoorDash.

12 29. In the wake of the food delivery surge, Consumer Reports highlighted the need for fee
13 transparency for consumers who use these apps and services.¹¹ A research team investigated food
14 delivery companies and the report measured their compliance with new rules regarding fees enacted in
15 seven US cities aimed at protecting consumers and businesses during the pandemic. It found that these
16 companies continued to not comply with the new ordinances and continued to “employ design practices
17 that obfuscate fees.” They concluded that “[c]onsumers deserve to have informed choices to understand
18 what they are being charged for *and* how their dollars spent impacts the restaurants they support and
19 patronize in their communities.”

20 **B. Chipotle’s App and Website Fails to Bind Users to Any Terms of Service**

21
22 ⁸ See Technomic and DoorDash, 2019 Economic Impact Report, *The Impact of DoorDash on*
23 *Economic Activity and Restaurant Resilience*, available at [https://doordashimpact.com/media/2019-](https://doordashimpact.com/media/2019-Economic-Impact-Report.pdf)
24 [Economic-Impact-Report.pdf](https://doordashimpact.com/media/2019-Economic-Impact-Report.pdf), last accessed January 19, 2021.

25 ⁹ *Id.*

26 ¹⁰ See Levi Sumagaysay, Market Watch, *The pandemic has more than doubled food-delivery*
27 *apps’ business. Now what?*, last updated November 27, 2020, available at
28 [https://www.marketwatch.com/story/the-pandemic-has-more-than-doubled-americans-use-of-food-](https://www.marketwatch.com/story/the-pandemic-has-more-than-doubled-americans-use-of-food-delivery-apps-but-that-doesnt-mean-the-companies-are-making-money-11606340169)
[delivery-apps-but-that-doesnt-mean-the-companies-are-making-money-11606340169](https://www.marketwatch.com/story/the-pandemic-has-more-than-doubled-americans-use-of-food-delivery-apps-but-that-doesnt-mean-the-companies-are-making-money-11606340169), last accessed
January 19, 2021.

¹¹ See Consumer Reports, *Collecting Receipts: Food Delivery Apps & Fee Transparency*,
September 29, 2020, accessible at [https://digital-lab-wp.consumerreports.org/wp-](https://digital-lab-wp.consumerreports.org/wp-content/uploads/2020/09/Food-delivery_-Report.pdf)
[content/uploads/2020/09/Food-delivery_-Report.pdf](https://digital-lab-wp.consumerreports.org/wp-content/uploads/2020/09/Food-delivery_-Report.pdf), last accessed January 19, 2021.

1 30. When a consumer downloads the Chipotle app, or uses the Chipotle website, the customer
2 is required to create an account in order to place an order for delivery or pickup.

3 31. In order to do so, a user enters in a name and contact information.

4 32. While the account creation screen contains a small hyperlink to view Chipotle’s Terms of
5 Service, users are not required affirmatively consent to such terms, such as by clicking a check box.

6 **C. Chipotle Prominently Promises Free or \$1 Delivery on its App and Website**

7 33. Beginning in May 2020, Chipotle began prominently featuring “free” or “\$1” delivery
8 promises on its mobile application and on its website nationwide.

9 34. Such representations often were made on the home screen of the app or website.

10 35. For all users nationwide, the “free” or “\$1” representations were then reiterated on the
11 penultimate screen shown to consumers before finalizing a food purchase.

12 36. Specifically, for supposed “free” delivery orders, that penultimate screen states:

13 Bag Total: [representing the cost of the food selected]

14 Subtotal: [representing the cost of the food selected, minus any promotional codes]

15 Delivery Fee: FREE

16 Taxes & Fees: [representing sales taxes and additional fees]

17 TOTAL: [adding up the above]

18 37. For supposed \$1 delivery orders, the screen is the same, except that “\$1” is placed in the
19 “Delivery Fee” line.

20 38. In the end, there was no way for Plaintiffs or other users of the Chipotle mobile
21 application or website to avoid seeing Chipotle’s promises of “free” or “\$1” delivery.

22 **D. Chipotle Omits and Conceals Material Facts About the Costs of the Chipotle**
23 **Delivery Service**

24 39. But those disclosures were false and misleading.

25 40. First, beginning in August, 2020, Chipotle furtively marked up the cost of food reflected
26 in the “Bag Total”—adding approximately 10% for orders nationwide to the cost of burritos, tacos and
27 quesadillas ordered for delivery. Chipotle did not and does not make similar mark-ups for identical food
28 items ordered via the same app or website, where such items are ordered for pickup instead of delivery.

1 41. Chipotle omitted this material fact from its app and website disclosures, never informing
2 users of this secret markup.

3 42. This secret markup—which Chipotle only applied to delivery orders—is a hidden delivery
4 fee. This alone renders false Chipotle’s promise of “free” or “\$1” delivery, which is made repeatedly in
5 the app and the website, and then repeatedly in the “Delivery Fee” line item on the order screen.

6 43. In short, the “delivery fee” is not actually “free” or “\$1.” The actual “delivery fee”—the
7 extra charge for having food delivered as opposed to picking it up—is the listed “Delivery Fee” *plus* the
8 hidden food markup applied exclusively to delivery orders.

9 44. Second, beginning in May, 2020 for orders nationwide, Chipotle applied a “Service
10 Charge” exclusively to delivery orders, hides that “Service Charge” from users behind a hyperlink, and
11 misrepresents what the “Service Charge” is actually for: a hidden delivery charge.

12 45. On ordering screen, and for the first time in the ordering process, Chipotle presents a line
13 item called “Taxes and Fees.” The ordering screen does not explain what “Taxes and Fees” are
14 comprised of.

15 46. Only if a user clicks on “Taxes and Fees” do two further line items appear: “Tax” and
16 “Service Fee.” “Tax” adds the locally applicable sales tax rate. “Service Fee” adds a further charge of
17 10% of the total food cost. This “service fee” is exclusively applied by Chipotle to delivery orders and is
18 therefore by definition an additional hidden delivery charge.

19 47. In short, the “delivery fee” is not actually “free” or “\$1.” The actual “delivery fee”—the
20 extra charge for having food delivered as opposed to picking it up—is the listed “Delivery Fee” plus the
21 hidden “Service Charge” markup applied exclusively to delivery orders.

22 48. If that were not enough, Chipotle misrepresents the true nature of the “Service Charge.”

23 49. A disclaimer below “Service Fee” explains “[t]his helps offset the costs of digital
24 convenience.”

25 50. This disclaimer is false. The “Service Fee” is not for “digital convenience,” it is a hidden
26 delivery fee. This is necessarily true because the “Service Fee” is only assessed on delivery orders. It is
27 not assessed on order placed through the mobile app or website that are for pickup—even though the
28 same so-called “digital convenience” is used by a consumer for such an order.

1 51. Moreover, after an order is placed, Chipotle sends a receipt to users via email. In that
2 post-order email, and only in that post-order email, Chipotle states the true nature of the “Service Fee.”
3 There, and only there, Chipotle states: “This fee powers easy, integrated delivery.” Chipotle thereby
4 admits that the “Service Charge” is a fee for delivery, and for nothing else.

5 52. Chipotle does not inform consumers the true costs of its delivery service and it
6 misrepresents its delivery charges as “free” or “\$1,” when in fact those costs are actually much higher.

7 **E. Chipotle’s Uniform Disclosures Emanated From Its California Headquarters**

8
9 53. Chipotle’s principal business office is located in Newport Beach, California.

10 54. Chipotle designed and disseminated nationwide the uniform advertisements and
11 representations discussed herein from that headquarters location.

12 **F. Other Restaurant Industry Actors and Chipotle Competitors Disclose Delivery Fees**
13 **Fairly and Expressly**

14 55. By unfairly obscuring its true delivery costs, Chipotle deceives consumers and gains an
15 unfair upper hand on competitors that fairly disclose their true delivery charges. For example, Chipotle
16 competitors Del Taco and El Pollo Loco both offer delivery services through their app and website. But
17 unlike Chipotle, Del Taco and El Pollo Loco fairly and prominently represent their true delivery charges.

18 56. For example, Del Taco does not mark-up food charges for delivery orders through its app,
19 nor does it add an additional “service charge” to delivery orders. Instead, for delivery orders its ordering
20 screen presents the following:

21 Subtotal:

22 Tax:

23 Delivery Charge:

24 Tip:

25 57. All line item amounts are **identical** for delivery and pick-up orders, except for the plainly
26 and fairly disclosed delivery charge—allowing consumers to understand the true cost of the delivery
27 service.

1 58. Similarly, Chipotle competitor El Pollo Loco does not mark-up food charges for delivery
2 orders through its app, nor does it add an additional “service charge” to delivery orders. Instead, for
3 delivery orders its ordering screen presents the following:

4 Subtotal:

5 Delivery Charge:

6 Tax:

7 59. All line item amounts are **identical** for delivery and pick-up orders, except for the plainly
8 and fairly disclosed delivery charge—allowing consumers to understand the true cost of the delivery
9 service.

10 **G. Plaintiff Aseltine’s Experience**

11 60. Plaintiff Aseltine used the Chipotle app to make a purchase of food on January 19, 2021,
12 in the total amount of \$18.09.

13 61. When using the app, and prior to placing his order, the Chipotle app stated that delivery
14 was “[free or \$1”].

15 62. However, the cost of the food ordered by Plaintiff Aseltine bore a hidden delivery fee
16 markup. To illustrate, Chipotle charged Plaintiff \$10.75 for a steak burrito.

17 63. Upon information and belief, the same steak burrito would have cost Plaintiff Aseltine
18 only \$9.15 had he picked it up from the Chipotle location.

19 64. In addition, Plaintiff Aseltine’s purchase included a hidden “Service Charge” that in fact
20 represented an additional delivery fee. Chipotle charged Plaintiff a \$2.15 service fee on his order.

21 65. Upon information and belief, this same service fee is assessed only on delivery orders like
22 the one made by Plaintiff Aseltine and would not have been assessed to Plaintiff had he picked up his
23 order in person from the Chipotle location.

24 66. Plaintiff Aseltine would not have made the purchase if he had known the Chipotle
25 delivery fee was not “[free or \$1].”

26 67. If he had known the true delivery fee, Plaintiff Aseltine and other reasonable consumers
27 would have chosen another method for receiving food from Chipotle or ordered food from another
28 provider.

1 right to expand, limit, modify, or amend this class definition, including the addition of one or more
2 subclasses, in connection with his motion for class certification, or at any other time, based upon, *inter*
3 *alia*, changing circumstances and/or new facts obtained during discovery.

4 78. **Numerosity:** At this time, Plaintiffs do not know the exact size of the Class; however,
5 due to the nature of the trade and commerce involved, Plaintiffs believe that the Class members are well
6 into the thousands, and thus are so numerous that joinder of all members is impractical. The number and
7 identities of Class members is administratively feasible and can be determined through appropriate
8 discovery in the possession of the Defendant.

9 79. **Commonality:** There are questions of law or fact common to the Class, which include,
10 but are not limited to the following:

- 11 a. Whether during the class period, Defendant deceptively represented “free
12 delivery” or “\$1 delivery” on food deliveries ordered through the Chipotle website
13 and mobile app;
- 14 b. Whether Defendant’s alleged misconduct misled or had the tendency to mislead
15 consumers;
- 16 c. Whether Defendant engaged in unfair, unlawful, and/or fraudulent business
17 practices under the laws asserted;
- 18 d. Whether Defendant’s alleged conduct constitutes violations of the laws asserted;
- 19 e. Whether Plaintiffs and members of the Class were harmed by Defendant’s
20 misrepresentations;
- 21 f. Whether Plaintiffs and the Class have been damaged, and if so, the proper measure
22 of damages; and
- 23 g. Whether an injunction is necessary to prevent Defendant from continuing to
24 deceptively represent “free delivery” or “\$1 delivery” on food deliveries ordered
25 through the Chipotle website and mobile app.

26 80. **Typicality:** Like Plaintiffs, many other consumers ordered food for delivery from
27 Chipotle’s website or mobile app, believing delivery to be “free” or “\$1” based on Defendant’s
28 representations. Plaintiffs’ claims are typical of the claims of the Class because Plaintiffs and each Class

1 member was injured by Defendant’s false representations about the true nature of the delivery fee.
2 Plaintiffs and the Class have suffered the same or similar injury as a result of Defendant’s false,
3 deceptive and misleading representations. Plaintiffs’ claims and the claims of members of the Class
4 emanate from the same legal theory, Plaintiffs’ claims are typical of the claims of the Class, and,
5 therefore, class treatment is appropriate.

6 81. **Adequacy of Representation:** Plaintiffs are committed to pursuing this action and have
7 retained counsel competent and experienced in prosecuting and resolving consumer class actions.
8 Plaintiffs will fairly and adequately represent the interests of the Class and does not have any interests
9 adverse to those of the Class.

10 82. **The Proposed Class and Satisfies the Rule 23(b)(2) Prerequisites for Injunctive**
11 **Relief.** Defendant has acted or refused to act on grounds generally applicable to the Class, thereby
12 making appropriate final injunctive and equitable relief with respect to the Class as a whole. Plaintiffs
13 remain interested in ordering food for delivery through Chipotle’s Website and mobile App; there is no
14 way for them to know when or if Defendant will cease deceptively misrepresenting the cost of delivery.

15 83. Specifically, Defendant should be ordered to cease from representing their delivery
16 service as “free” or “\$1” and to disclose the true nature of their mark-ups.

17 84. Defendant’s ongoing and systematic practices make declaratory relief with respect to the
18 Class appropriate.

19 85. **The Proposed Class Satisfies the Rule 23(b)(3) Prerequisites for Damages.** The
20 common questions of law and fact enumerated above predominate over questions affecting only
21 individual members of the Class, and a class action is the superior method for fair and efficient
22 adjudication of the controversy. The likelihood that individual members of the Class will prosecute
23 separate actions is remote due to the extensive time and considerable expense necessary to conduct such
24 litigation, especially when compared to the relatively modest amount of monetary, injunctive, and
25 equitable relief at issue for each individual Class member.

26 **CAUSES OF ACTION**

27 **FIRST CLAIM FOR RELIEF**

28 **Violation of California’s Unfair Competition Law (“UCL”)
Cal. Bus. & Prof. Code § 17200, et seq.**

1 86. Plaintiffs incorporate the preceding allegations by reference as if fully set forth herein.

2 87. California Business & Professions Code § 17200 prohibits acts of “unfair competition,”
3 including any “unlawful, unfair or fraudulent business act or practice.” Chipotle’s conduct related to
4 deceptively representing that it provides “free delivery” or “\$1 delivery” on food deliveries ordered
5 through its website and mobile app violates each of the statute’s “unfair,” “unlawful,” and “fraudulent”
6 prongs.

7 88. The UCL imposes strict liability. Plaintiffs need not prove that Chipotle intentionally or
8 negligently engaged in unlawful, unfair, or fraudulent business practices—but only that such practices
9 occurred.

10 89. A business act or practice is “unfair” under the UCL if it offends an established public
11 policy or is immoral, unethical, oppressive, unscrupulous, or substantially injurious to consumers, and
12 that unfairness is determined by weighing the reasons, justifications, and motives of the practice against
13 the gravity of the harm to the alleged victims.

14 90. A business act or practice is “fraudulent” under the UCL if it is likely to deceive members
15 of the public.

16 91. A business act or practice is “unlawful” under the UCL if it violates any other law or
17 regulation.

18 92. Chipotle committed unfair and fraudulent business acts and practices in violation of Cal.
19 Bus. & Prof. Code § 17200, *et seq.*, by affirmatively and knowingly misrepresenting on its website and
20 mobile app that it provides “free delivery” or “\$1 delivery” for food orders, when, in reality, it hides
21 delivery charges through hidden food markup applied exclusively to delivery orders, and through the
22 assessment of an elusive “service fee” exclusively charged to delivery customers.

23 93. Defendant’s acts and practices offend an established public policy of fee transparency in
24 the marketplace, and constitute immoral, unethical, oppressive, and unscrupulous activities that are
25 substantially injurious to consumers.

1 94. The harm to Plaintiffs and the Class outweighs the utility of Defendant’s practices. There
2 were reasonably available alternatives to further Defendant’s legitimate business interests, other than the
3 misleading and deceptive conduct described herein.

4 95. Defendant’s conduct also constitutes an “unlawful” act under the UCL because, as
5 detailed in Plaintiffs’ Second Claim for Relief below, it also constitutes a violation of sections 1770(a)(5)
6 and (a)(9) of the California Consumer Legal Remedies Act (“CLRA”), Cal. Civ. Code § 1750, *et seq.*,
7 *infra*, in that Chipotle deceptively represents that it provides “free delivery” or “\$1 delivery” for food
8 orders made on its website or mobile app; in reality, however, this marketing message is false because
9 Chipotle’s (a) use of the delivery service causes an increase in food prices; and (b) the so-called “service
10 fee” is assessed exclusively on delivery customers and is therefore by definition a delivery charge.

11 96. Chipotle’s business practiced emanated from California.

12 97. Chipotle’s business practices have misled Plaintiffs and the proposed Class and will
13 continue to mislead them in the future.

14 98. Plaintiffs relied on Defendant’s misrepresentations about the falsely advertised cost of
15 delivery in choosing to utilize the Chipotle food delivery service in ordering food from Defendant’s
16 website or mobile app.

17 99. By falsely marketing “free” or “\$1” delivery, Chipotle deceived Plaintiffs and Class
18 members into making online food purchases they otherwise would not make.

19 100. Had Plaintiffs known the truth of the delivery service fee, *i.e.*, that Chipotle’s “Service
20 Charge” and hidden food markups were in all reality “delivery fees,” he would have chosen another
21 method for receiving food from Chipotle or ordered food from another provider.

22 101. As a direct and proximate result of Chipotle’s unfair, fraudulent, and unlawful practices,
23 Plaintiffs and Class members suffered and will continue to suffer actual damages. Defendant’s fraudulent
24 conduct is ongoing and present a continuing threat to Class members that they will be deceived into
25 ordering food for delivery under the false belief that delivery is “free” or “\$1.”

26 102. As a result of its unfair, fraudulent, and unlawful conduct, Chipotle has been unjustly
27 enriched and should be required to disgorge its unjust profits and make restitution to Plaintiffs and Class
28 members pursuant to Cal. Bus. & Prof. Code § 17203 and 17204.

SECOND CLAIM FOR RELIEF
Violation of California’s Consumer Legal Remedies Act (“CLRA”)
Cal. Civ. Code § 1750, *et seq.*

103. Plaintiffs incorporate the preceding allegations by reference as if fully set forth herein.

104. This cause of action is brought pursuant to the Consumers Legal Remedies Act (CLRA), California Civil Code § 1750, *et seq.* Plaintiffs and each member of the proposed Class are “consumers” as defined by California Civil Code § 1761(d). Defendant’s sale of food products to consumers for delivery ordered through its website and mobile app were “transactions” within the meaning of California Civil Code § 1761(e). Defendant’s online delivery service utilized by Plaintiffs and the Class is a “service” within the meaning of California Civil Code § 1761(b). The food products purchased by Plaintiffs and the Class are “goods” within the meaning of California Civil Code § 1761(a).

105. Defendant violated and continues to violate the CLRA by engaging in the following practices proscribed by California Civil Code § 1770(a) in transactions with Plaintiffs and the Class which were intended to result in, and did result in, the sale of Chipotle food orders for delivery:

- a. “Representing that goods or services have . . . characteristics . . . that they do not have” (a)(5); and
- b. “Advertising goods or services with intent not to sell them as advertised” (a)(9).

106. Specifically, Chipotle advertises to customers that use of its delivery service is “free” or only “\$1,” but this is false because Defendant imposes hidden delivery charges to consumers through two ways: (1) by secretly marking up food items applied exclusively for delivery orders and (2) by covertly applying a “Service Charge” exclusively to delivery orders and misrepresenting that it is actually a delivery charge.

107. At no time does Chipotle disclose the true nature of its delivery fee to consumers; instead, it repeatedly conceals and misrepresents this material information at several steps of the transaction process.

108. Chipotle’s business practiced emanated from California.

109. Pursuant to § 1782(a) of the CLRA, Plaintiffs’ counsel notified Defendant in writing by certified mail of the particular violations of §1770 of the CLRA and demanded that it rectify the

1 problems associated with the actions detailed above and give notice to all affected consumers of
2 Defendant’s intent to act. If Defendant fails to respond to Plaintiffs’ letter or agree to rectify the problems
3 associated with the actions detailed above and give notice to all affected consumers within 30 days of the
4 date of written notice, as proscribed by §1782, Plaintiffs will move to amend their Complaint to pursue
5 claims for actual, punitive and statutory damages, as appropriate against Defendant. As to this cause of
6 action, at this time, Plaintiffs seeks only injunctive relief.

7 **THIRD CLAIM FOR RELIEF**
8 **Deceptive Acts Or Practices – N.Y. Gen. Bus. Law § 349**
9 **Asserted On Behalf Of The New York Class**

10 110. Plaintiffs incorporate the preceding paragraphs of this Complaint as if set forth fully
11 herein.

12 111. N.Y. Gen. Bus. Law § 349(a) provides that “[d]eceptive acts or practices in the conduct of
13 any business, trade or commerce or in the furnishing of any service in this state are hereby declared
14 unlawful.”

15 112. Chipotle committed deceptive acts and practices in violation of N.Y. Gen. Bus. Law § 349
16 by affirmatively and knowingly misrepresenting on its website and mobile app that it provides “free
17 delivery” or “\$1 delivery” for food orders, when, in reality, it hides delivery charges through hidden food
18 markup applied exclusively to delivery orders, and through the assessment of an elusive “service fee”
19 exclusively charged to delivery customers.

20 113. Chipotle’s actions regarding its food delivery service, as described herein, are deceptive
21 acts or practices in the conduct of business trade or commerce of food and in the furnishing of food
22 delivery services.

23 114. The deceptive acts or practices and the furnishing of food delivery services took place in
24 the state of New York as well as California because Chipotle operates in nationwide, created and
25 published its deceptive advertisements nationwide, and because the food delivery transaction took place in
26 the state of New York when Chipotle accepted Plaintiff Dundon’s food delivery order placed on the
27 Chipotle app in the state of New York. In short, the underlying nature of the deceptive transactions
28 occurred in New York.

1 115. N.Y. Gen. Bus. Law § 349(h) provides that “any person who has been injured by reason of
2 any violation of this section may bring an action in his own name to enjoin such unlawful act or practice,
3 an action to recover his actual damages or fifty dollars, whichever is greater, or both such action.”

4 116. Plaintiffs and the Class have been injured by Defendant’s violations of N.Y. Gen. Bus.
5 Law § 349.

6 117. Defendant’s misleading and deceptive conduct occurred, and continues to occur, in the
7 course of Chipotle’s business.

8 118. As an actual and proximate result of Defendant’s misconduct, Plaintiffs and the Class were
9 injured and suffered damages.

10 119. Defendant is liable to Plaintiffs and the Class for damages in amounts to be proven at trial.

11 **FOURTH CLAIM FOR RELIEF**

12 **Unjust Enrichment**

13 **(On Behalf of Plaintiffs and the Nationwide Class or, in the alternative,
14 the California Subclass)**

15 120. Plaintiffs hereby repeat, reallege, and incorporate by reference each and every allegation
16 contained above as though fully set forth herein.

17 121. To the detriment of Plaintiffs and the Class, Defendant has been, and continues to be,
18 unjustly enriched as a result of its wrongful conduct alleged herein.

19 122. Plaintiffs and the Class conferred a benefit on Defendant when they paid Defendant
20 unearned Service Fees.

21 123. Defendant unfairly, deceptively, unjustly, and/or unlawfully accepted said benefits, which
22 under the circumstances, would be unjust to allow Defendant to retain.

23 124. Defendant’s unjust enrichment is traceable to, and resulted directly and proximately from,
24 the conduct alleged herein.

25 125. Plaintiffs and the Class, therefore, seek disgorgement of all wrongfully obtained fees
26 received by Defendant as a result of its inequitable conduct as more fully stated herein.

27 **PRAYER FOR RELIEF**

28 **WHEREFORE**, Plaintiffs on behalf of themselves and the Class seeks judgment in an amount to
be determined at trial, as follows:

- 1 (a) For an order enjoining Defendant from continuing the unlawful practices set forth above;
2 (b) For declaratory and injunctive relief as set forth above;
3 (c) For an order requiring Defendant to disgorge and make restitution of all monies it
4 acquired by means of the unlawful practices set forth above;
5 (d) For compensatory damages according to proof;
6 (e) For punitive damages according to proof;
7 (f) For reasonable attorneys' fees and costs of suit;
8 (g) For pre-judgment interest; and
9 (h) Awarding such other and further relief as this Court deems just, proper and equitable.

10 **JURY DEMAND**

11 Plaintiffs hereby demand a jury trial on all claims so triable.

12
13 Dated: November 1, 2021

KALIELGOLD PLLC

14
15 By: */s/ Jeffrey D. Kalief* _____
16 Jeffrey D. Kalief
17 Sophia G. Gold

Attorneys for Plaintiffs and the Proposed Class

1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA, COUNTY OF ALAMEDA**

3 I am employed in the District of Columbia. I am over the age of 18 and not a party to the within
4 action. My business address is 1100 15th Street NW, 4th Floor, Washington, DC 20005.

5 On **November 1, 2021**, I served the document(s) described as:

6 **AMENDED CLASS ACTION COMPLAINT**

7 on the interested parties in this action by sending [] the original [or] [✓] a true copy thereof [✓] to
8 interested parties as follows [or] [] as stated on the attached service list:

9
10 **DLA PIPER LLP (US)**
11 ANGELA C. AGRUSA (SBN 131337)
12 *angela.agrusa@us.dlapiper.com*
13 SHANNON E. DUDIC (SBN 261135)
14 *shannon.dudic@us.dlapiper.com*
15 2000 Avenue of the Stars
16 Suite 400 North Tower
17 Los Angeles, California 90067-4704
18 Tel: 310.595.3000
19 Fax: 310.595.3300

Attorneys for Defendant,
CHIPOLTE MEXICAN
GRILL, INC.

20 [] **BY MAIL (ENCLOSED IN A SEALED ENVELOPE):** I deposited the envelope(s)
21 for mailing in the ordinary course of business at Los Angeles, California. I am
22 “readily familiar” with this firm’s practice of collection and processing
23 correspondence for mailing. Under that practice, sealed envelopes are deposited with
24 the U.S. Postal Service that same day in the ordinary course of business with postage
25 thereon fully prepaid at Los Angeles, California.

26 [X] **BY E-MAIL:** I hereby certify that this document was served from Los Angeles,
27 California, by e-mail delivery on the parties listed herein at their most recent known e-
28 mail address or e-mail of record in this action.

[] **BY FAX:** I hereby certify that this document was served from Los Angeles,
California, by facsimile delivery on the parties listed herein at their most recent fax
number of record in this action.

[] **BY PERSONAL SERVICE:** I delivered the document, enclosed in a sealed envelope,
by hand to the offices of the addressee(s) named herein.
I declare under penalty of perjury under the laws of the State of California that the foregoing is
true and correct. Executed this **November 1, 2021**, at Los Angeles, California.

26 NEVA R. GARCIA


Signature